IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

RCRev..No. 357 of 2006-B

RCA.41/2001 of RENT CONTROL APPELLATE AUTHORITY(ADDL.DISTRICT COURT (ADHOC)-II, THALASSERY
RCP.209/1999 of PRL.M.C.,KANNUR
.....

REVISION PETITIONER/APPELLANT/RESPONDENT:

KALLALATHIL SREEDHARAN, S/O. KELAN,
BUSINESSMAN, RESIDING NEAR PARAKANDY SCHOOL,
KANNUR-II AMSOM, THALIKAVU DESOM, KANNUR DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: RESPONDENT/PETITIONER:

P. NIZAR, AGED 66 YEARS,
S/O. HUSSAIN @ IMBICHI KOYAMMA THANGAL,
RETIRED PROFESSOR IN ENGINEERING, RESIDING AT
V.P. HOUSE, VALAPATTANAM, KANNUR DISTRICT.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R. UDAYABHANU, JJ.

R.C.R.NO.357 OF 2006

DATED THIS THE 29TH DAY OF NOVEMBER 2006

ORDER

Abdul Gafoor,J.

The tenant, faced with an order of eviction on the ground available to the landlord under Section 11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 [Act 2 of 1965] {for short 'the Act'}, has filed this revision petition assailing the concurrent finding in that regard by the Rent Controller and the Rent Control Appellate Authority.

2. The prime contention raised assailing the finding is that Exts.A3 and A4 documents relied on by the landlord had been admitted in evidence in re-examination of PW1, the landlord. Ext.A3 did not show that the building mentioned therein was exclusively in the possession and ownership of the

tenant. Of course, Ext.A4 had revealed that the owner of the building was the tenant. But those documents were accepted by the authorities below without giving an opportunity to the tenant to controvert it. Though Ext.A3 was discarded by the authorities below, Ext.A4 was much relied on. It is further submitted that cessation of occupation was not successfully proved. He had taken the premises on lease for conducting the business of wholesale lending of foreign liquor. At present, he, being an Abkari Contractor, is making use of the building for storing of bottles. Therefore, there was no cessation of occupation.

3. Whatever be the circumstances under which Ext.A4 was admitted in evidence, it is not disputed before either of the authorities below or before us that the building mentioned in Ext.A4 assessment register of the local authority did not belong to the tenant. There is also no evidence from his part that the building is not suitable for

the purpose for which the tenanted premises is now made use of. In such circumstances, the concurrent finding cannot be assailed on that count. Therefore, that finding is to be confirmed.

4. Admittedly the building had been taken on rent for the purpose of conducting liquor business. Further admittedly because of the establishment of a religious institution very close to that building, such type of business cannot be conducted in that building. Therefore, the building is not put to the use for which it was taken on rent. The cessation of occupation mentioned in Section 11(4)(iv) of the Act does not envisage mere possession alone and keeping it idle but also the use of the building as well. Having regard to the purpose for which it is of let out, the use of the building is a necessary aspect while considering the issue. Therefore, the finding on that ground alleged by the landlord also cannot be successfully assailed.

In the result, we dismiss this Rent Control

Revision. Any how, taking consideration the plea that empty bottles were kept in the premises and it will take time for shifting the same, we grant four months time from today to the petitioner to surrender vacant possession of the scheduled building unconditionally to the respondent/landlord. In the meanwhile, the petitioner has to clear off the entire rent in arrears within one month from today and he shall file an affidavit to the effect before the Execution Court. He shall also continue to pay monthly rent to the respondent/landlord on the due dates till he actually surrenders vacant possession of the scheduled building. Vacant possession of the scheduled building has to be surrendered positively on or before 29-3-2007. The time so allowed to surrender vacant possession of the building will be available to the petitioner/tenant only in the event of his filing affidavit before the Execution Court within one month reporting that rent in arrears are

cleared, failing which, the time of four months granted herein shall not be available to him and he shall be liable to be evicted on the expiry of the said one month.

K.A.ABDUL GAFOOR
JUDGE

K.R.UDAYABHANU,
JUDGE

ks.